

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1557 Parental Rights in Education
SPONSOR(S): Education & Employment Committee, Harding
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee	15 Y, 5 N, As CS	Wolff	Hassell
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in their student's services or monitoring related to a student's mental, emotional, or physical health or well-being. All procedures adopted under the bill must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent.

The bill prohibits school districts from maintaining procedures that withhold information, or encourage students to withhold information, related to a student's mental, emotional, or physical health or well-being from parents. A school district may only withhold information if a prudent person would reasonably believe that disclosure would subject the student to abuse, abandonment, or neglect.

The bill restricts discussions of sexual orientation or gender identity to only those that are age-appropriate and developmentally appropriate for students while prohibiting a school district from encouraging discussions of these topics in primary grades.

All school district student support services training must adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE must review and update, as necessary, all relevant guidelines, standards, and frameworks for compliance with this bill.

The bill creates a cause of action for parents that permits them to enforce their rights through declaratory and injunctive relief. A prevailing parent is entitled to attorney fees and court costs and may be awarded damages.

The bill does not appear have a fiscal impact. See Fiscal Comments.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional Rights of Parents

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.¹ This fundamental liberty interest is rooted in the fundamental right of privacy in making important decisions relating to marriage, family relationships, and child rearing and education.² The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:³

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.⁴ These rights may not be intruded upon absent a compelling state interest.⁵ According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:⁶

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

The United States Supreme Court has held that students in schools are 'persons' under the constitution and that they are possessed of fundamental rights which the state must respect.⁷ Florida's constitution provides broad protections to its citizens right to privacy⁸ and the Florida Supreme Court has held that such protections extend to minors.⁹ However, the rights to privacy granted to minors do not invalidate a

¹ *Santosky v. Kramer*, 455 U.S. 745, 748 and 753 (1982) (holding the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment, and termination of any parental rights requires due process proceedings); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (holding there is a fundamental right under the Fourteenth Amendment for parents to oversee the care, custody, and control of their children).

² *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977) (recognizing the right of privacy in personal decisions relating to marriage, family relationships, child rearing, and education); *See Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972) (holding a state law requiring that children attend school past eighth grade violates the parents' constitutional right to direct the religious upbringing of their children); *See Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing the presumption that parents act in their children's best interest); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923) (affirming that the Constitution protects the preferences of the parent in education over those of the state); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (recognizing the right of parents to direct the upbringing of and education of their children).

³ *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

⁴ *Beagle v. Beagle*, 678 So. 2d 1271, 1272 (Fla. 1996) (holding a state law violated a parent's constitutional right to privacy by imposing grandparent visitation rights over objection of the parent without evidence of harm to the child or other compelling state interest).

⁵ *Id. See, e.g., Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001).

⁶ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

⁷ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

⁸ Art. I, s. 23, Fla. Const.

⁹ *B.B. v. State*, 659 So. 2d 256, 258 (Fla. 1995).

state's effort to protect minors from the conduct of others¹⁰ nor do they necessarily override the fundamental rights of parents related to child rearing.¹¹

Parents' Bill of Rights

Overview

In 2021,¹² the legislature created the Parents' Bill of Rights which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹³ The bill prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹⁴

Additionally, the Legislature found that important information relating to a minor child should not be withheld, either inadvertently or purposefully, from his or her parent, including information relating to the minor child's health, well-being, and education, while the minor child is in the custody of the school district. Therefore, the Legislature established a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.¹⁵

Parents' Rights Related to Education of their Child

The Parents' Bill of Rights enumerates several rights of a parent, such as:¹⁶

- The right to direct the education and care of his or her minor child.
- The right to direct the upbringing and the moral or religious training of the minor child.
- The right, pursuant to s. 1002.20(13), F.S., to access and review all school records relating to the minor child.
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law.
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The Parents' Bill of Rights is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied.¹⁷ To this end, any employee of the state, or any of its political subdivisions, or any governmental entity may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent.¹⁸

However, the law specifies that it does not:¹⁹

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law.
- Condone, authorize, approve, or apply to a parental action or decision that would end life.

¹⁰ *Id.* at 259.

¹¹ *Frazier ex rel. Frazier v. Winn*, 535 F.3d 1279, 1285 (11th Cir. 2008) (holding that a law requiring a parent's approval for a student to refuse to stand during the pledge of allegiance survived a facial challenge as the rights of a parent to raise their children would control in a substantial number of cases). The court did acknowledge that in individual cases, such as those involving mature high school students, the balance of rights between parents, the school, and the student could favor the student. *Id.*

¹² Chapter 2021-199, L.O.F.

¹³ Chapter 1014, F.S.

¹⁴ Section 1014.03, F.S.

¹⁵ See Section 1014.02(1), F.S.

¹⁶ Section 1014.04(1), F.S.

¹⁷ Section 1014.04(4), F.S.

¹⁸ Section 1014.04(3), F.S.

¹⁹ Section 1014.04(2), F.S.

- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority.
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

In addition to the above enumerated rights, the Parents' Bill of Rights requires Florida's school districts to adopt policies designed to promote parental involvement in the public school system.²⁰ Such policies must provide for:²¹

- A plan, pursuant to s. 1002.23, F.S., for parental participation in schools to improve parent and teacher cooperation in such areas as homework, school attendance, and discipline.
- A procedure, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about his or her child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials, pursuant to s. 1006.28(2)(a)2., F.S. Such objections may be based on beliefs regarding morality, sex, and religion or the belief that such materials are harmful.
- Procedures, pursuant to s. 1002.20(3)(d), F.S., for a parent to withdraw his or her student from any portion of the school district's comprehensive health education required under s. 1003.42(2)(n), F.S., that relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to his or her child's participation. Such procedures must provide for a parent to be notified in advance of such course content so that he or she may withdraw his or her student from those portions of the course.
- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities offered at his or her child's school, including those that are extracurricular or part of the school curriculum.

Parents must be explicitly notified about a number of parental rights and responsibilities set forth in the education code.²² A school district may comply with these notice requirements by providing information to parents electronically or by publishing it to their website.²³

Florida School Districts Maintain Policies that Exclude Parents

While the Parents' Bill of Rights provides that important information relating to a minor child should not be withheld from his or her parent while the minor child is in the custody of the school district,²⁴ multiple school districts in Florida maintain policies that exclude parents from discussions and decisions on sensitive topics relating to students.²⁵ In addition, at least one Florida school district is currently

²⁰ Section 1014.05(1), F.S.

²¹ *Id.*

²² Section 1014.05(1)(f), F.S. For example, school district must provide notice about the right to exempt their student from immunizations, the right to inspect school district instructional materials, and the right to opt out of any school district data collection not required by law. *Id.*

²³ Section 1014.05(2), F.S.

²⁴ Section 1014.02(1), F.S.

²⁵ See Broward County Public Schools, *Lesbian, Gay, Bisexual, Transgender, Questioning + Critical Support Guide* (2012), pp. 29-30, available at

<https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13475/BCPS%20LGBTQ%20Critical%20Support%20Guide%20Edition%20III%202020FinalRev2421.pdf>; School District of Palm Beach County, *The School District of Palm Beach County LGBTQ+ Critical Support Guide*, (2017), pp. 52-53, available at

https://p14cdn4static.sharpschool.com/UserFiles/Servers/Server_270532/File/Curriculum/Middle%20&%20HS/LGBTQ_Critical_Support_Guide_SDPBC_v02_2021.pdf; Miami-Dade County Public Schools, *2020-2021 Guidelines for Promoting Safe and Inclusive Schools*, p. 7, available at <https://api.dadeschools.net/WMSFiles/94/pdfs/GUIDELINES-FOR-PROMOTING-SAFE-07-2020.pdf>;

Sarasota County Schools, *Creating Safe Schools for All Students: Gender Diverse Student Guidelines*, (Oct. 2018), p. 2, available at https://www.sarasotacountyschools.net/cms/lib/FL50000189/Centricity/Domain/1167/SCSBGenderDiverseGuidelinesFINAL_10232018.pdf; Volusia County Schools, *Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide*, pp. 11-12, available at <https://www.vcsedu.org/sites/default/files/department-files/Equity/VCS%20LGBTQ%20Support%20Guide%202020.pdf>;

and Hillsborough County Public Schools, *Creating Safe Schools for All Students*, p. 5, available at <https://www.lgba.org/wp-content/uploads/2019/12/lgbtq-resource-guide-1.pdf>.

involved in litigation with a parent after allegedly withholding information from the parent regarding their student's gender transition at school.²⁶

Effect of Proposed Changes

The bill specifies how a parent's fundamental right to make decisions regarding the care and upbringing of his or her child must be addressed in the public school setting. The bill requires that school districts adopt procedures for notifying parents if there is a change in the student's services or monitoring related to a student's mental, emotional, or physical health or well-being. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage students to discuss issues related to his or her well-being with his or her parent or to seek permission to discuss or facilitate a discussion with the parent.

The bill expressly prohibits a school district from adopting any procedures or student support forms that:

- require district personnel to withhold from a parent information about his or her student's mental, emotional, or physical health or well-being; or
- encourage or have the effect of encouraging a student to withhold from a parent such information.

The bill bars school personnel from discouraging or prohibiting the notification of parents or parental involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being.

The bill allows such information to be withheld if a reasonably prudent person would believe that such disclosure would result in abuse, abandonment, or neglect of the student and specifies that it does not limit the duty of school district personnel to report suspicion of such acts to the Department of Children and Families.

Additionally, the bill prohibits a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels²⁷ or in a manner that is not age-appropriate or developmentally appropriate for students.

The bill creates a cause of action for declarative and injunctive for parents against a school district that violates the provisions of the bill. A prevailing parent may receive damages and is entitled to reasonable attorney fees and court costs.

The bill requires that all student support training provided by school districts to school personnel adhere to guidelines, standards, and frameworks established by the Department of Education (DOE). By June 30, 2023, the DOE is required to review and update, as necessary for compliance with this bill, the following:

- school counseling frameworks and standards;
- educator practices and professional conduct principles;
- other student services personnel guidelines, standards, or frameworks.

B. SECTION DIRECTORY:

Section 1. Amends s. 1001.42, F.S.; requiring district school boards to adopt procedures that comport with certain provisions of law for notifying a student's parent of specified information; requiring such procedures to reinforce the fundamental right of parents to

²⁶ Ana Goni-Lessan, *Lawsuit against Leon Schools says district excluded parents from gender discussions*, Nov. 16, 2021, <https://www.tallahassee.com/story/news/2021/11/16/leon-county-schools-sued-over-lgbtq-guide-transgender-lgbtq-guide/6342695001/> (last visited Jan 17, 2022). The Leon County School District LGBTQ guide previously did not require disclosure of information to parents but has been taken down from the website and is undergoing review by the district. *Id.*

²⁷ In the U.S., primary grades customarily include the first three grade levels. In Florida, teacher certification in prekindergarten/primary education covers instruction provided to students age 3 through grade 3. Rule 6A -4.0142, F.A.C.

make decisions regarding the upbringing and control of their children in a specified manner; prohibiting the procedures from prohibiting a parent from accessing certain records; providing construction; prohibiting a school district from adopting procedures or student support forms that require school district personnel to withhold from a parent specified information or that encourage or have the effect of encouraging a student to withhold from a parent such information; providing an exception; prohibiting school district personnel from discouraging or prohibiting parental notification and involvement in critical decisions affecting a student's mental, emotional, or physical well-being; prohibiting a school district from encouraging classroom discussion about sexual orientation or gender identity in primary grade levels or in a specified manner; authorizing a parent to bring an action against a school district to obtain a declaratory judgment that a school district procedure or practice violates certain provisions of law; providing for the additional award of injunctive relief, damages, and reasonable attorney fees and court costs to certain parents; requiring certain training developed or provided by a school district to adhere to standards established by the Department of Education.

Section 2. Requires the department to review and update, as necessary, specified materials by a certain date

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires the DOE to review and update, as necessary, existing guidelines, standards and frameworks. Additionally, school districts may need to adopt updated training materials based on the DOE review. Any updates to existing guidelines, standards, and frameworks, as well as the adoption of compliant training, would be accomplished within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 20, 2022, the Education & Employment Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that school district procedures may permit the withholding of information otherwise required to be disclosed to a parent if a reasonably prudent person would believe that such disclosure would subject the parent's student to abuse, abandonment, or neglect, as those terms are defined in law.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.